

Department of Justice				
	2013-15 Actual	2015-17 Legislatively Approved*	2017-19 Current Service Level	2017-19 Governor's Budget
General Fund	63,337,324	78,870,126	94,668,945	84,015,552
Other Funds	246,176,176	304,888,300	293,923,290	318,453,163
Other Funds (NL)	3,469,160	5,057,012	5,077,143	5,077,143
Federal Funds	110,148,006	168,304,853	122,484,387	188,005,351
Federal Funds (NL)	15,170,224	15,740,252	16,322,641	16,322,641
Total Funds	\$438,300,890	\$572,860,543	\$532,476,406	\$611,873,850
Positions	1,279	1,325	1,323	1,342
FTE	1,261.22	1,298.77	1,303.01	1,318.57
*Includes Emergency Board and administrative actions through December 2016.				

Program Description

The Department of Justice (DOJ) is responsible for general legal counsel and supervision of all civil actions and legal proceedings in which the state is a party or has an interest. DOJ is also responsible for a number of programs, including child support, district attorney assistance, criminal intelligence, crime victims' compensation, charitable activity enforcement, Medicaid fraud, mortgage mediation, organized crime-related law enforcement, elder abuse, mortgage mediation, environmental crimes, and consumer protection/financial fraud and education services. The Division of Child Support (DCS) is in the implementation phase of a multi-biennia information technology project, the Child Support Enforcement Automated System (CSEAS), to replace its current child support case management and financial system.

General Fund is used primarily for the Child Support Program, Defense of Criminal Convictions, crime victims' programs, the law enforcement activities of the Criminal Justice Division, and CSEAS debt service. DOJ also receives a General as Other Funds allocation from the Criminal Fines Assessment allocation for crime victims' services. Other Funds resources include: charges to agencies for legal services (some of which originates as General Fund), legal settlements and judgements, and license and other fees, among others. The DCS receives Temporary Cash Assistance for Needy Families (TANF) recoveries as Other Funds and Federal incentives as Federal as Other Funds. Federal Funds include the federal share of the Child Support, Medicaid Fraud programs, and crime victims' grants. Federal Funds provide 66% of eligible program costs to maintain the child support program mandated under Title IV-D of the federal Social Security Act, including CSEAS. General Fund resources and federal incentive funds provide the state match.

Key linkages with other budgets, in addition to DOJ's role in the public safety system, include: Department of Human Services (Juvenile dependency representation; recoveries of TANF, and elder abuse); Oregon Youth Authority (TANF recoveries); Oregon Health Authority (Medicaid fraud and Tobacco Master Settlement Agreement); Housing and Community Services Department (Foreclosure Avoidance

program); Department of Administrative Services - Risk Fund (a self-insurance funds for only tort liability claims); District Attorneys and their Deputies (child support and criminal investigations and prosecutions); and local governments and non-profits for pass-through funding of the Crime Victims Services Division.

CSL Summary and Issues

The 2017-19 current service level budget for the agency totals \$532.5 million total funds (1,323 positions/1,303.01 FTE). The CSL is \$40.4 million, or 7%, less than the \$572.9 million 2015-17 legislatively approved budget and there are two fewer positions (+4.24 FTE).

The CSL includes a phase-out of \$65.4 million in one-time investments, primarily in the CSEAS (\$44.1 million), the Crime Victims' Services Division VOCA grant (\$14.2 million), Cover Oregon litigation costs (\$2 million) and the Titan Fusion Center (\$0.9 million). There is a mandated caseload/inflation increase for the Defense of Criminal Convictions, Appellate Division, and Trial Division of \$8.3 million General Fund (13 positions/10.97 FTE). The CSL phases-in the full costs of the newly established Elder Abuse program (\$1.4 million General Fund; 3 positions/3.00 FTE). The General Fund Debt Service was increased by \$4.1 million for the roll-up costs of previously issued debt, bringing the total CSL Debt Service cost to \$9.3 million. The Crime Victims Law Center is fully funded at \$329,558 General Fund and \$50,000 Other Funds (punitive damage awards).

The modified CSL reduces the CSL by revenue shortfalls. For DOJ, the modified CSL is \$11 million (59 positions; 50.15 FTE) less than the CSL due to a \$5.1 million shortfall in the Child Support Division and a \$5.9 million revenue shortfall in CSEAS program, which is technically an appropriate phasing-out of one-time funding. There are also four General Fund issues that *potentially* understate the CSL: the revenue shortfall for DCS; continued project funding for CSEAS; continued funding for the Titan Fusion Center; and continued funding for diligent defense of the Tobacco Master Settlement Agreement.

When a child support obligation involves a family receiving TANF, the family assigns support rights to the state to offset the expense. Such recoveries fund the Child Support Division as well as DHS Child Welfare, Medical Assistance, and the Oregon Youth Authority. The amount of TANF recoveries has been in decline due to federal and state law changes and a reduction in the number of individuals receiving TANF assistance due to an improving economy. This increases the amount of child support going to families, but reduces the amount of state recoveries/revenue used to fund the Division's expenses and pass-through to other agencies. With caseloads and total collection costs remaining unchanged, there is a shortfall in revenue to pay for the Division's operating expense. Whether TANF recoveries or General Fund, the federal match remains 66% (\$1.7 million General Fund; 27 positions/26.84 FTE).

The second issue is continued funding for the Child Support Enforcement Automated System. The project has entered the execution phase, where it will remain for the next five years until fully implemented in May of 2021; however, there is no federal mandate for this project, which could be slowed to accommodate a reduced level of funding. The project continues to be viewed as being prudently and professionally managed by DOJ staff (\$2.9 million General Fund Debt Service for \$14.2 million in new Article XI-Q bonding; 32 positions/ 23.81 FTE).

The third issue is continued funding of the Titan Fusion Center. The purpose of state, rather than federal, Fusion Centers is to facilitate state information sharing, analysis, and training for law enforcement agencies to combat terrorism. Originally funded entirely with Federal Funds, Oregon's Fusion Center has transitioned to predominately state General Fund beginning in 2014. The Fusion Center has been phased-in and out of DOJ's budget for the last three biennia (\$0.9 million General Fund; 3 positions/3.00 FTE).

The fourth issue is related to a budgeted error that neglected to account for permanent funding for the Tobacco Master Settlement Agreement defense of court-ordered arbitration that was approved by the Legislature in 2015 (\$284,021 General Fund; 1 position/1.00 FTE).

Policy Issues

There are a number of new and recurring policy issues, which include: (a) juvenile dependency representation; (b) establishment of the legislatively adopted AG rate; and (c) determining the level of funding for the Defense of Criminal Convictions.

One of the most significant policy/budget issues facing the DOJ will be related to juvenile dependency representation. ORS 9.320 required state agencies to appear in court proceedings with attorney general counsel; however, in practice, due to resource constraints, DHS child welfare case workers appear in court without counsel in post-judicial, uncontested hearings. The lack of legal representation in the courtroom raised concerns, primarily among circuit court judges. During the 2014 Session, the DHS practice was codified until June 30, 2015 [see House Bill 4156 (2014)]. SB 222 (2015) again extended the sunset from June 30, 2015 to June 30, 2018 on statutes that temporarily codify current practice authorizing the DHS child welfare case workers to appear in juvenile court dependency proceedings without counsel at hearings required by ORS 419B.305 and proceedings where the district attorney appears on behalf of the state. In addition to the extension of the sunset, SB 222 established an 18-member Task Force on Legal Representation in Childhood Dependency. The task force was charged with recommending models to ensure adequate representation for children and parents served by the child welfare system. The task force submitted a report to the Legislature on July 25, 2016. The findings of the task force are that DHS caseworkers require legal representation through DOJ and that DOJ offer these services through a "flat fee" billing model. The task force recommendations require legislation to be implemented. The Legislature in 2017 may wish to evaluate lower cost options than those recommended by the task force and also evaluate the financial implications of moving DOJ from an hourly billing to a flat fee model. The option also exists to simply extend, or make permanent, the current sunset. The fiscal impact is estimated at \$6.9 million Other Funds (General Fund and Federal Funds from Department of Human Services)(35 positions/30.80 FTE).

The second issue is the setting of the statewide legal services billing rate. The largest source of Other Funds revenue for DOJ comes from charges for legal services to state agencies, including DOJ itself. The 2017-19 CSL budget for all agencies assumes an attorney rate of \$198 per hour, which is a \$23 (13.1%) increase from the 2015-17 rate of \$175 per hour and is expected to generate \$178.3 million, which is \$18.3 million (11.4%) more than the \$160 million for the current biennium. Although the agency has the statutory authority to determine the various hourly rates, the rate has historically been reviewed through the legislative budget process. The establishment of the final rate is

dependent upon policy package decision, impacts of substantive legislation, and other financial considerations. Reductions to the legal services rates produce General Fund savings. The Governor's budget reduced the rate from \$198 to \$185, which produced \$4.6 million in General Fund savings.

The third issue is determining the level of funding for the Defense of Criminal Convictions. The CSL budget totals \$28.6 million General Fund and is based on the \$198 legal services rate and mandated caseload changes. This is a \$8.3 million, or 41%, increase over the 2015-17 approved DCC budget of \$20.3 million. A \$2 million special purpose appropriation set aside during the 2015-17 biennium expired unused.

Other Significant Issues and Current Discussions

A recent Oregon Supreme Court case affirmed a \$25 million lower court judgment against a major tobacco company for a plaintiff's smoking related death. The state's portion of this judgment, approximately \$11 million, has been paid to the state as punitive damages and deposited into the Criminal Injuries Compensation Account, used to fund crime victims' assistance programs. The Legislature in 2015 added \$1.9 million General Fund to backfill a punitive damages revenue shortfall, as those awards were thought to be unavailable in the future due to Tort Reform and the resulting impact to settlement negotiations. CVSD's tentative plan is to spend down the settlement over the next two biennia beginning with the 2017-19 biennium.

The level of federal funding for Victims of Crime Act assistance grant (VOCA) funding for domestic violence and sexual assault continues to see dramatic increases from \$5.4 million in 2013-15 to \$24 million in the 2015-17 biennium to an estimated \$41 million above CSL for the 2017-19 biennium. Approximately \$20 million per year may become the new normal. The federal VOCA Victim Assistance award is sub-granted through CVSD to nonprofit and prosecutor-based victim service providers as well as child abuse intervention centers. VOCA are formula grants that require no state matching funds; however, a federal requirement does require subgrantees to provide 20% matching funds. A state General Fund appropriation and Criminal Fines Account allocation for domestic and sexual violence provide the majority of local matching funds with any remainder coming from local entities. Additionally, DOJ could, if necessary, seek a federal waiver to remove the local matching funds requirement.

The funding structure of the CVSD is overly complex, with funding coming from the General Fund, Criminal Fines Account, punitive damage awards, restitution, subrogation, donations, and Federal Funds all used to fund a myriad of programs and subprogram. This can make establishing legislative priorities difficult due to the fungible use of these funds. A review of the funding structure of the division is recommended.

The Co-Chair's Existing Resources Budget Framework includes primarily a reduction to the Defense of Criminal Convictions and assumes a reduced AG rate.